

² Appellant, through counsel, timely requested oral argument pursuant to 20 C.F.R. § 501.5(b). By order dated March 1, 2019, the Board exercised its discretion and denied the request, finding that the arguments on appeal could be adequately addressed in a decision based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 18-0524 (issued March 1, 2019).

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.⁴

ISSUE

The issue is whether appellant has met his burden of proof to establish a right shoulder condition causally related to the accepted January 31, 2017 employment incident.

FACTUAL HISTORY

On February 1, 2017 appellant, then a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on January 31, 2017 he injured his neck and right shoulder while operating a pallet jack while in the performance of duty. He indicated that when the pallet jack hit a groove in the floor, it pulled on his arm. Appellant stopped work on February 1, 2017.

Appellant was initially treated in urgent care. In an examination report dated February 1, 2017, Suzanne F. Dabakis-Choquette, a nurse practitioner, related that appellant sustained an injury "last night" while operating a pallet jack and complained of right shoulder and neck pain. Examination of appellant's right shoulder showed positive Hawkins and Neer signs and pain along the trapezius. A February 1, 2017 right shoulder x-ray showed no fracture or dislocation and normal acromioclavicular (AC) and glenohumeral joints. She diagnosed a shoulder strain and advised appellant to avoid heavy lifting. A February 2, 2017 work status note from the same urgent care facility indicated "[right] shoulder injury," and advised that appellant could resume work on February 6, 2017 performing light duty, with a 10-pound lifting restriction. Appellant was to continue light duty through February 13, 2017.

In an examination report and duty status report (Form CA-17) dated February 13, 2017, Dr. Talal Khan, a Board-certified internist, related that he had treated appellant for a right shoulder injury that occurred on January 31, 2017. He reported that appellant was driving a power jack and drove over a groove on the platform, which jolted his right shoulder. Dr. Khan reported that on clinical examination appellant's pain "could be secondary to rotator cuff injury." He diagnosed rotator cuff injury and checked a box indicating that appellant could not work. Dr. Khan referred appellant for a right shoulder magnetic resonance imaging (MRI) scan.

A February 27, 2017 right shoulder MRI scan revealed AC joint degeneration, acromion anatomic morphology, rotator cuff tendinopathy, and intra-articular bicipital tendinopathy without full-thickness rotator cuff tear.

³ 5 U.S.C. § 8101 *et seq.*

⁴ The Board notes that following the November 29, 2017 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

On February 28, 2017 Dr. Jennie V. Garver, a Board-certified orthopedic surgeon, diagnosed right rotator cuff tendinitis and referred appellant for physical therapy. Appellant began physical therapy on March 10, 2017, which OWCP authorized.

In a report dated March 24, 2017, Dr. Garver indicated that she had seen appellant on February 28, 2017 and that he was under her care for a right shoulder injury. She also indicated that she would evaluate appellant's ability to return to work at his next appointment on April 4, 2017.

In a follow-up note dated April 4, 2017, Dr. Garver indicated that appellant's status was essentially unchanged since his February 28, 2017 visit. She recommended that appellant remain off work for another six weeks while he continued with physical therapy. Dr. Garver also provided an April 4, 2017 duty status report (Form CA-17) with a diagnosis of right shoulder labral injury.

In an undated attending physician's report (Form CA-20), Dr. Garver described a history of injury of "jarring injury" to the right shoulder on January 31, 2017. She diagnosed right shoulder labral injury. Dr. Garver checked a box marked "yes" indicating that appellant's condition was caused or aggravated by the employment activity. She explained: "jarring injury caused labral injury." Dr. Garver noted that appellant remained disabled from work.

In an April 25, 2017 development letter, OWCP noted that when appellant's claim was first received it appeared to be a minor injury that resulted in minimal or no lost time from work and was therefore administratively approved for a payment of a limited amount of medical expenses. It reported that the medical evidence addressing his claim had not been formally considered and that additional factual and medical evidence was necessary to establish his claim. OWCP requested that appellant provide additional factual and medical evidence to establish his claim and provided a questionnaire for his completion. It afforded him 30 days to respond.

OWCP subsequently received appellant's completed questionnaire dated May 16, 2017. Appellant described that he was on dock 6 operating a pallet jack when the wheel of the pallet jack hit some grooves in the floor and made the handle move hard to the right, pulling his arm, and jerking his head and body.

OWCP also received additional physical therapy treatment records dated through May 11, 2017.

By decision dated May 26, 2017, OWCP denied appellant's traumatic injury claim. It accepted that the January 31, 2017 incident occurred as alleged and that there was a diagnosed right shoulder condition. However, OWCP denied appellant's claim finding insufficient medical evidence of record to establish that his right shoulder condition was causally related to the accepted January 31, 2017 employment incident.

Following the decision, OWCP received narrative reports by Dr. Garver dated April 4 and May 16, 2017. Dr. Garver noted appellant's complaints of pain over the anterior and lateral aspects of his right shoulder. Upon physical examination of appellant's right shoulder, he observed mild tenderness to palpation over the subacromial space. Neer and Hawkins tests were positive. Dr. Garver reported that appellant had a "jarring injury" to the right shoulder on January 31, 2017, which appeared to have resulted in a rotator cuff strain.

On June 19, 2017 appellant, through counsel, requested a hearing before an OWCP hearing representative.

Appellant submitted additional medical evidence. In a narrative reports dated June 13 through July 31, 2017, Dr. Garver described that on January 31, 2017 appellant was at work when a “pallet jack he was driving hit an immovable object, resulting in a jarring injury to the shoulder.” She noted appellant’s complaints of right shoulder pain and diminished range of motion. Dr. Garver reported examination findings of mild tenderness over the subacromial space of appellant’s right shoulder and positive Neer and Hawkins tests. She indicated that a right shoulder MRI scan showed no evidence of rotator cuff tear, but there were concerns for strain and early capsulitis. In the July 31, 2017 report, Dr. Garver opined that appellant “sustained a jarring injury to the right shoulder on [January 31, 2017], resulting in a likely strain to the rotator cuff.” She also reported that appellant may have adhesive capsulitis and recommended that he return to physical therapy treatments.

Dr. Garver also completed Form CA-20 and Form CA-17 reports dated June 13, 2017. She noted a January 31, 2017 date of injury and diagnosed right shoulder labral injury. Dr. Garver checked a box marked “yes” indicating that appellant’s condition was caused by his employment. She reported “jarring injury caused labral injury.”

In a narrative report dated September 12, 2017, Dr. Garver accurately described the January 31, 2017 employment injury. She reported dramatic improvement in appellant’s shoulder symptoms since his cortisone injection and returning to physical therapy treatments. Upon examination of appellant’s right shoulder, Dr. Garver observed no tenderness to palpation and improved range of motion. Speed and Neer tests were mildly positive. Dr. Garver again reported that appellant had a “jarring injury to the right shoulder at work on January 31, 2017 likely resulting in a strain to the rotator cuff.” She recommended that appellant return to part-time, limited duty for four hours per day beginning September 19, 2017.

On September 19, 2017 appellant returned to work in a part-time, limited-duty capacity.

A hearing was held on October 13, 2017.

In a letter dated October 9, 2017, Dr. Garver related that appellant had been under her care since February 28, 2017. She described that, on January 31, 2017, appellant was steering a pallet jack at work when it struck something, resulting in a jarring injury to the right shoulder. Dr. Garver indicated that on initial evaluation of appellant’s right shoulder on February 28, 2017, she observed tenderness over the subacromial space and long head biceps tendon. Range of motion was mildly restricted. She opined: “I believe that the jarring injury to the shoulder likely caused a strain to the rotator cuff and/or biceps tendon with subsequent development of this inflammation.” Dr. Garver discussed the medical treatment she provided. She further explained: “While rotator cuff inflammation can occur without injury, the onset of the patient’s symptoms correlates temporally with the jarring injury sustained at work on [January 31, 2017], and I believe with a reasonable degree of medical certainty that the patient’s right shoulder complaints are the result of that injury.”

Dr. Garver provided another narrative report dated October 16, 2017. She described the claimed January 31, 2017 employment injury and provided examination findings similar to her September 12, 2017 evaluation. Dr. Garver again noted that appellant had a “jarring injury to the shoulder at work on [January 31, 2017], resulting in a strain of the rotator cuff.” She recommended that appellant increase his work hours to six hours per day.

In an October 19, 2017 letter, counsel requested that OWCP review five color photographs that were enclosed.

By decision dated November 29, 2017, an OWCP hearing representative affirmed the May 26, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁶ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁷ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁹ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.¹⁰ The second component is whether the employment incident caused a personal injury.¹¹

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.¹² A physician’s opinion on whether there is causal relationship

⁵ *Supra* note 3.

⁶ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁹ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

¹⁰ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹¹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹² *T.H.*, *supra* note 9; *Robert G. Morris*, 48 ECAB 238 (1996).

between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.¹³ Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).¹⁴

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.¹⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted January 31, 2017 employment incident.

Appellant submitted several narrative reports, CA-20 and CA-17 forms, and letters by Dr. Garver dated February 28 to October 16, 2017. In an April 4, 2017 narrative report, Dr. Garver described that on January 31, 2017 appellant injured his right shoulder when the pallet jack he was driving hit something. She provided examination findings of observed mild tenderness to palpation over the right shoulder subacromial space and positive Neer and Hawkins's signs. In reports dated July 13 to September 12, 2017, Dr. Garver opined that appellant sustained a "jarring injury" to the right shoulder, which "likely resulted" in a rotator cuff strain. She also noted that appellant "may have adhesive capsulitis." The Board finds that Dr. Garver's determination of a "likely" rotator cuff strain and her opinion that he "may have" adhesive capsulitis is speculative and equivocal and does not constitute a definitive diagnosis.¹⁶ Likewise, Dr. Garver's opinion in his February 13, 2017 note and Form CA-17 that appellant's right shoulder pain "could be secondary" to a rotator cuff injury is speculative and equivocal.¹⁷ An award of compensation may not be based on surmise, conjecture, or speculation.¹⁸ Thus, the Board finds that these medical reports are insufficient to establish appellant's claim.

Dr. Garver's assessment regarding causal relationship is similarly equivocal. In an October 9, 2017 letter, she opined: "I believe that the jarring injury to the shoulder likely caused a strain to the rotator cuff and/or biceps tendon." Dr. Garver did not definitively opine that the "jarring injury" to appellant's right shoulder on January 31, 2017 caused or contributed to appellant's current right shoulder condition. The Board has found that a physician's opinion must

¹³ *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

¹⁴ *Id.*

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

¹⁶ *Ricky S. Storms*, 52 ECAB 349, 352 (2001).

¹⁷ Findings of pain or discomfort alone do not satisfy the medical aspect of the fact of injury medical determination. *Supra* note 15 at Chapter 2.803.4a(6) (August 2012).

¹⁸ *Robert A. Boyle*, 54 ECAB 381 (2003); *Patricia J. Glenn*, 53 ECAB 159 (2001).

be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and a claimant's employment.¹⁹

In an October 16, 2017 report, Dr. Garver again provided an accurate history of the January 31, 2017 work incident and findings on examination. She noted that appellant had a "jarring injury to the shoulder at work on [January 31, 2017], resulting in a strain of the rotator cuff." Dr. Garver, however, did not explain how appellant's diagnosed rotator cuff condition was causally related to the accepted employment incident. Medical evidence that states a condition, but does not offer any rationalized medical explanation regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.²⁰ The need for rationalized medical opinion evidence is particularly important in this case because a February 27, 2017 right shoulder MRI scan showed AC degenerative joint disease.²¹ Dr. Garver did not provide a discussion of the underlying degenerative condition or provide medical rationale explaining how appellant's current right shoulder condition resulted from the January 31, 2017 employment incident and not the underlying degenerative condition.²²

Dr. Garver also provided Form CA-17 reports which did not provide an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.²³ Appellant also submitted Form CA-20 reports dated April 4 to June 13, 2017 where she checked a box marked "yes" indicating that appellant's condition had been caused or aggravated by the employment activity. She noted: "jarring injury caused labral injury." The Board has held that when a physician's opinion on causal relationship consists only of responding "yes" to a form question, without explanation or rationale, that opinion is of diminished probative value and is insufficient to establish a claim.²⁴

The remaining medical evidence of record also fails to establish appellant's claim. The diagnostic examination reports, including the February 1, 2017 right shoulder x-ray examination and February 27, 2017 right shoulder MRI scan do not contain an opinion on the causal relationship between appellant's diagnosed right shoulder conditions and the accepted January 31, 2017 employment incident and therefore lack probative value.²⁵ In addition, the February 1, 2017

¹⁹ *M.V.*, *supra* note 13.

²⁰ *D.H.*, Docket No. 17-1913 (issued December 13, 2018); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

²¹ *See supra* note 15.

²² *W.S.*, Docket No. 17-1769 (issued July 26, 2018); *S.W.*, Docket No. 08-2538 (issued May 21, 2009).

²³ *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

²⁴ *M.E.*, Docket No. 18-0330 (issued September 14, 2018); *D.D.*, 57 ECAB 734, 738 (2006); *Deborah L. Beatty*, 54 ECAB 340 (2003).

²⁵ The Board has held that reports of diagnostic tests lack probative value as they fail to provide an opinion on the causal relationship between appellant's employment duties and the diagnosed conditions. *See M.S.*, Docket No. 18-1280 (issued March 12, 2019); *A.B.*, Docket No. 17-0301 (issued May 19, 2017).

urgent care treatment records are of no probative value because a nurse practitioner is not considered a “physician” as defined under FECA.²⁶ The physical therapy treatment records are similarly insufficient to establish entitlement to FECA benefits.²⁷

On appeal counsel contends that OWCP did not reference the photographs of the work place conditions that caused appellant’s injury. The Board notes, however, that the January 31, 2017 employment incident has been accepted and is therefore not in dispute. The issue is whether the accepted January 31, 2017 employment incident caused or contributed to appellant’s right shoulder condition. Counsel argues that there is no medical evidence in the record to contradict Dr. Garver’s opinion on causal relationship. For the reasons explained above, however, Dr. Garver’s medical reports are insufficient to establish that appellant’s right shoulder condition was causally related to the accepted incident. Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.²⁸ Because appellant has failed to provide such evidence, he has not met his burden of proof to establish his traumatic injury claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a right shoulder condition causally related to the accepted January 31, 2017 employment incident.

²⁶ 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a nurse practitioner or physical therapist will be considered medical evidence if countersigned by a qualified physician. *Supra* note 15 at Chapter 2.805.3a(1).

²⁷ *Id.*

²⁸ *I.R.*, Docket No. 09-1229 (issued February 24, 2010); *D.I.*, 59 ECAB 158 (2007).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board